IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5793 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 5793 of 2002

MR NIRAV C THAKKAR for Petitioner No. 1

MR AD OZA for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/08/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, a Superintending Engineer under the Gujarat Electricity Board has prayed for a declaration that the petitioner's correct date of birth is 27.9.1946 and not 6.8.1944 as entered in his service

book. The petitioner has also prayed for a direction to the respondents to correct the petitioner's birth date as aforesaid.

2. The petitioner joined service under the respondent Gujarat Electricity Board as a Junior Engineer on 7.3.1970. The petitioner was, thereafter, promoted as Deputy Engineer, Executive Engineer and ultimately Superintending Engineer, which post the petitioner is presently holding. In the year 1983 the petitioner submitted a representation to the respondent Board requesting the authorities to change the petitioner's birth date from 6.8.1944 as entered in the service book to 27.9.1946 on the strength of certificate dated 8.3.1983 issued by the Sarpanch, Sapar Gram Panchayat stating that the petitioner was born at village Sapar on 27.9.1946 as per the entry made at SNo. 245 on page No.12 of the birth and death register of the Sapar Gram Panchayat. However, the authorities did not take any decision, and it was only on 1.1.2002 that the Deputy General Manager of the respondent Board called upon the petitioner to furnish the documents like School Leaving Certificate, certificate issued by the SSC Board, details about the birth date of the brothers and sisters of the petitioner and also their School Leaving Certificates. The petitioner complied with that request by furnishing all the requisite documents with the petitioner's letter dated 11.1.2002. However, the authorities did not take any decision, and apprehending that the petitioner would be made to retire on superannuation on 31.8.2002, the petitioner filed the present petition on 24.6.2002. Reliance is placed on the Government Resolution dated 18.2.1974 and also on the GEB circular dated 20.6.1986 laying down that in case of discrepancy between the birth date mentioned in the School Leaving certificate and that mentioned in the Birth & Death Register, the birth date mentioned in the Birth & Death Register should be accepted as correct for all purposes.

3. In response to the notice issued by the Court, affidavit in reply has been filed by the Industrial Relations Officer of the respondent-Board resisting petition and contending that although representations were made in 1983 nothing was done by the petitioner till the fag end of his career. The petitioner is estopped from applying for correction of the birth date which he had himself given at the time of joining service in the year 1970 on the basis of the School Leaving Certificate. Reliance is also placed on the GEB circular dated 22.2.1999 superseding the previous circular dated 20.6.1985.

4. Mr. Mihir Joshi, learned counsel for the petitioner has submitted that the petitioner has produced clinching evidence to show that the petitioner's correct birth date is 27.9.1946 and there is no reason why the authorities should not accept that as the correct birth date. He has further submitted that the petitioner made the first representation in the year 1983 that is 19 years before the date of retirement, and therefore, there is no delay on the part of the petitioner.

As regards the ground of estoppel pleaded by the respondent, it is submitted that the petitioner had not taken any advantage on the basis of the birth date of 1944, and therefore, the petitioner is not estopped from praying for a change of the birth date.

5. In reply, Mr. Dave, for Mr. A.D.Oza for the respondent has submitted that the so called entry in the birth and death register is not produced before the authorities or before this Court, and all that is produced is certificate of the Sarpanch which cannot be taken as a substitute for the relevant extract of the birth and death register. It is further submitted that even the said certificate of the Surpanch, which purports to have been issued on 8.3.1983, appears to have been issued on the basis of the affidavit of the petitioner's mother. That fact itself indicates that the affidavit was filed for the purpose of having the petitioner's birth date entered in the birth register, and for change in the petitioner's service book. Hence there was no independent and contemporaneous evidence produced by the petitioner to show that the petitioner's correct birth date was 27.9.1946.

It is further submitted that the petitioner had joined service in the year 1970 and the petitioner is now due to retire on superannuation on 31.8.2002. If the petitioner's representations were not accepted in the year 1983, it was open to the petitioner to institute appropriate legal proceedings at the relevant time without waiting for so many years. It is, therefore, submitted that the petition deserves to be dismissed on the ground of delay also.

Lastly it is submitted that the petitioner having joined service of the respondent in the year 1970 with a clear representation that he was born on 6.8.1944, the petitioner is now estopped from contending that his correct birth date was different. Strong reliance is placed on decision of the Apex Court in UNION OF INDIA V.

C.RAMASWAMI, 1997(4) SCC 647, COMMISSIONER OF POLICE, BOMBAY AND ANOTHER V. BHAGWAN V LAHANE, 1997(1) SCC PAGE 247 and the decision of this Court in B.C.NIKAM V. DIST. DEVELOPMENT OFFICER SURAT AND ANOTHER, 2000(1) GLH 256.

6. Having heard the learned counsel for the parties, it appears to the Court that apparently there is some delay on the part of the petitioner in approaching this Court, but the very fact that the respondent authorities themselves do not appear to have attended to the petitioner's representation earlier and that it was only in January 2002 that the inquiry was undertaken about the change in the birth date after getting the reminder from the petitioner, the petition cannot be dismissed on the ground of delay.

7. However, there is considerable substance in the submission made on behalf of the respondent Board that other than the affidavit dated 28.2.1983 of the petitioner's mother, there is no independent or contemporaneous evidence to show that the petitioner's correct birth date was 27.9.1946. The certificate dated 8.3.1983 issued by the Sarpanch of the Sapar Gram Panchayat, which was also produced with the petitioner's representation dated 9.3.1983, does not indicate the date on which the relevant entry about petitioner's birth date was made in the birth and death register. From the last paragraph of the said affidavit dated 28.2.1983 of the petitioner's mother (which is produced at Annexure-B to the petition-page 31), it does appear that the affidavit was filed for the purpose of getting the petitioner's birth date entered for the first time in the birth register and also for the purpose of getting correction of the birth date in the petitioner's service book. This being the position, the contention urged on behalf of the petitioner that whenever there is any discrepancy in the birth register and the one in the School Leaving Certificate, the entry in the birth register has to be accepted, does not hold good for the simple reason that in the facts of the present case there was no entry about the petitioner's birth date being 27.9.1946 in the birth & death register of the concerned Gram Panchayat when the petitioner joined service. The said entry appears to have been made in March 1983, long after the petitioner came out from the school and joined the service of the respondent Board in the year 1970.

8. In fact, the Board's circular dated 22.5.1989 at Anexure-II to the reply affidavit points out the tendency on the part of the employees to get subsequent birth date recorded in the birth register after joining the service

on the basis of some affidavits or some documents when there was no such entry in the birth register of the local body at the time of birth. The relevant extract of the circular reads as under:

> "From the extracts so furnished of the birth and death registers it was observed that some of the employees after issuance of the circular dated 20.6.1986 have approached the local bodies or Municipalities and based on their affidavit or other documents they have got their birth date registered in the birth and death registers of the local bodies. Such type of registration cannot be validly accepted as after a long lapse of time the authorities of local bodies have no record to verify the facts and merely on the basis of affidavit or any documents their registering the birth date cannot be accepted as valid.
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> In view of the above position the competent authority have again reviewed the entire issue and decided that for satisfactory proof of date of birth will mean the following;
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> a) Date of birth as recorded in the SSC or equivalent examination in case of those who have passed that examination.
>
> AND
>
> b) Date of birth as recorded in School Leaving Certificate in case of those who have not passed S.S.C.E. or equivalent examination.
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> In view of the above decision of the competent authority the circular No. EST/II/CHN.BD/86/740 dtd. 20.6.1986 is hereby superseded."

9. Admittedly, as per the School Leaving Certificate produced by the petitioner himself at the time of joining service in the year 1970, the petitioner's birth date is 6.8.1944 and not 27.9.1946.

10. As regards reliance placed by Mr. Dave for Mr. A.D.Oza for the respondent on the GEB circular dated 22.5.1989 Mr. Joshi's submission is that the petitioner having made his first application in the year 1983, the case would not be governed by the circular dated 22.5.1989.

11. It appears to the Court that in any case when the petitioner made a representation in the year 1983, the GEB Circular dated 20.6.1986 was not in existence. Since the final decision on the application has been taken by the respondent Board after 22.5.1989, obviously the circular dated 22.5.1989 would apply as indicated above. Even if the circular dated 20.6.1986 were to apply, entry in the birth register would have to be given primacy only when the entry in the birth register was made at the relevant time around the time of birth and not after the entry was made in the School Leaving Certificate, and never in a case where the entry in the birth register of the local authority is made after the employee joins service on the basis of the birth date as recorded in the school leaving certificate.

12. In view of the aforesaid findings, the controversy about applicability of the principle of estoppel is not required to be gone into. Even if necessary, it is required to be noted that the principle laid down by the Apex Court in UNION OF INDIA V. C.RAMASWAMI & OTHERS, 1997 (4) SCC 647 is not merely about interpretation of Rule 16(A) of the All India Service Rules, but it lays down a general principal for cases where the employee seeks to have his birth date changed and pleads that the petitioner had not taken any advantage by representing a particular birth date at the time of entering into service. To appreciate the real ratio of the decision of the Hon'ble Supreme Court in C. Ramaswamy's case (Supra), it is necessary to set out verbatim the relevant discussion in the judgment :-

"In that case (Manak Chand Vaidya vs. State of H.P, (1976) 1 SLR 402 (HP)) correction of date of birth was sought by the petitioner. It was contended on behalf of the State that the petitioner therein was estopped from pleading a different date of birth when the entry is that regard in his service-record had been entered on his representation at the time when he entered service. This contention was repelled by the High Court with the observation that it had not been shown that the petitioner gained any advantage by representing a particular date of birth at the time of entry into the service.

25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be

appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be again public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.

26. In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged the Court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief of change of date of birth can be legitimately denied. To that extent the decision in Manak Chand case does not lay down the correct law."

(emphasis supplied)

The principle enunciated by the Apex Court that it would be against public policy to permit the change of birth date to enable longer service to the person

concerned is a principle of general application, and not one based on the particular rule in that case.

13. Learned counsel Mr. Joshi for the petitioner, however, submits that since the principle laid down in the aforesaid case would apply only where maturity is a relevant factor to assess the suitability, the employer must state in reply to such a petition in so many words that at the time of selecting the candidates including the petitioner for appointment, maturity was considered to be a relevant factor and that but for the petitioner's age being shown older at the relevant time, the petitioner would not have been selected.

14. It is not possible to accept the aforesaid contention and that too in proceedings which are instituted decades after the employee joins service. Maturity would be a relevant factor to assess the suitability for appointment to any administrative or technical post including that of a Junior Engineer.

15. For the reasons aforesaid, the petition is summarily dismissed.

(M.S.Shah,J)
Jayantki*